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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/538,562	03/29/2000	Donald F. Gordon	SEDN/247CIP1	6071

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EXAMINER	
SHELEHEDA, JAMES R	
ART UNIT	**PAPER NUMBER**
2623	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/538,562	GORDON ET AL.	
	Examiner	Art Unit	
	JAMES SHELEHEDA	2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 June 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-26* is/are pending in the application.

4a) Of the above claim(s) *16-26* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-15* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 06/17/08 have been fully considered but they are not persuasive.

a. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.,* 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In this case, Gordon (WO 99/31115) was relied upon to disclose transporting a plurality of demand cast program streams within a single transport stream (pages 3-5).

Coleman was then relied upon to disclose transmitting demand cast guide pages (column 6, lines 30-65). *A single demand cast stream may contain multiple demand cast guide pages* (column 7, lines 43-58).

Ota was then relied upon to disclose a demand cast system which will stop transmitting content which is not being accessed (column 7, line 65-column 8, line 23) to allow those resources to be used to transmit other requested content (column 7, lines 65-column 8, line 23).

Thus, it is the combination of Ota with Gordon and Coleman which meets the current claim limitations of transmitting demand cast guide pages in a

demand cast stream (as taught by Gordon and Coleman) and replacing pages not being accessed with other pages (as taught in combination with Ota).

Therefore, applicant's arguments are not convincing.

b. A courtesy copy of applicant's commonly assigned provisional application 60/034,490 is hereby provided, as the rejections are based upon the incorporation of this application.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon et al. (Gordon) (WO 98/31115 A2) (of record) in view of Coleman et al. (Coleman) (5,844,620) (of record) and Ota et al. (Ota) (6,198,478) (of record).

As to claim 1, Gordon discloses a system for providing access to array of guide pages from an interactive program guide (selection menus; see US provisional patent Application 60/034,490 filed 01/13/1997 and incorporated herein by reference; page 19, line 15 in which Application 60/034,490 clearly discloses "an array of guide pages" in its specification page 19, lines 30-page 21 and Fig. 3-4) within constraints imposed by

limited bandwidth available in a distribution network (summary of the invention; page 2-5), the system comprising:

a distribution control center coupled to the distribution network (Fig. 1);

a session manager 106 in the distribution control center for monitoring and controlling usage of demand cast stream bandwidth with the distribution network (page 14, lines 7-page 14, lines 31); and

a transport stream generator 102 including a processor and a multiplexer (inherently including a processor and a multiplexer so to generate the multiplexed transport stream 104), for receiving demand-cast program guide usage information from the session manager 106 and using the information to control which demand-cast content items are multiplexed into a transport stream, and for generating the multiplexed transport stream for transmission to a plurality of terminals via the distribution network to deliver a requested content to content item to a terminal requesting said requested content item (a program is selected from a program guide is communicating back to the server 102 through communication path 103 from the video session manager 106, as such the server 102 provides the requested information to the (video) session manager 106 as a packetized data stream, see page 9, lines 33-page 10, lines 8 and page 18, lines 8-page 19, lines 16).

While Gordon discloses demand cast content items, he fails to specifically disclose demand cast program guide pages and determining if there is a demand cast guide page currently in a demand cast stream that is not currently being accessed and replacing the demand cast guide page not currently being accessed.

In an analogous art, Coleman discloses system for providing access to an array of program guide pages (column 4, lines 25-48) wherein program guide pages are demand cast to subscribers in a high speed demand cast stream (column 6, lines 30-65) for the typical benefit of providing a convenient program guide data to a user with minimal response time while balancing bandwidth and memory requirements (column 1, line 66-column 2, line 38).

Additionally, in an analogous art, Ota discloses a content distribution system (column 1, lines 9-21) which will determining if there is a demand cast content item currently in a demand cast stream that is not currently being accessed (determining if anyone is viewing the program, and emptying the channel if there are no current viewers; Fig. 8, S12; column 7, line 65-column 8, line 23) and replacing the demand cast guide page not currently being accessed (using an available empty channel to fulfill the newly requested content; column 8, lines 8-12 and 37-50) for the typical benefit of providing a more cost efficient system which can provide more programming to viewers without needing expensive equipment capable of providing numerous more channels (column 2, lines 7-14).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Gordon's system to include demand cast program guide pages, as taught by Coleman, for the typical benefit of providing a convenient program guide data to a user with minimal response time while balancing bandwidth and memory requirements.

Additionally, it would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Gordon and Coleman's system to include determining if there is a demand cast guide page currently in a demand cast stream that is not currently being accessed and replacing the demand cast guide page not currently being accessed, as taught by combination with Ota, for the typical benefit of providing a more cost efficient system which can provide more programming to viewers without needing expensive equipment capable of providing numerous more channels

As to claim 2, Gordon, Coleman and Ota disclose wherein the pluralities of terminals 124_{1-n} are coupled to a node 110 within the distribution network, and the transport stream is transmitted from the transport stream generator to the node (see Gordon at Fig. 1; page 12, lines 15-30+).

As to claim 3, Gordon, Coleman and Ota disclose wherein the session manager (el. 216 of video session manager 106 of Fig. 2) receives demand-cast stream acquisition, release, and request messages from the plurality of terminals (see Gordon at page 13, lines 21-page 14, lines 16 and Ota at column 8, line 1-59).

As to claim 4, Gordon, Coleman and Ota disclose wherein the acquisition, release, and request messages are transmitted via out-of-band communications (upstream; see Gordon at page 13, lines 29-35).

As to claim 5, Gordon, Coleman and Ota disclose wherein the transport stream includes a list of available demand-cast streams, and the list is used by a terminal in determining whether a demand cast stream has a particular demand cast guide page that may be acquired immediately or needs to be requested (see Gordon at page 14, lines 17-page 15, lines 14 and page 19, lines 3-16).

As to claim 6, Gordon, Coleman and Ota disclose wherein the acquisition message is sent from the terminal to the session manager if the stream is acquired (…the set-top return an acknowledgment … see Gordon at page 17, lines 18-24), and a request message is sent from the terminal to the session manager if the stream needs to be requested (see Gordon at page 21, lines 5-10 and page 23, lines 22-26).

As to claim 7, Gordon, Coleman and Ota disclose wherein a release message is sent from the terminal to the session manager once the terminal is no longer acquiring the stream (see Gordon at page 21,lines 16-19).

As to claim 8, Gordon, Coleman and Ota disclose wherein the session manager tracks demand-cast streams that are acquired by at least one terminal by maintaining a dynamic list of terminals that are presently acquiring each demand-cast stream (see Gordon at page 18, lines 12-27).

As to claim 9, Gordon, Coleman and Ota disclose wherein the session manager 106 informs the transport stream generator 102 when a terminal request a demand-cast stream, which is not present in the transport stream (see Gordon at page 14, lines 17-page 15, lines 14).

As to claim 10, Gordon, Coleman and Ota disclose wherein the session manager 106 informs the transport stream generator 102 when there is no longer any terminals acquiring the demand-cast stream (see Gordon at page 16, lines 29-35; page 21, lines 13-18 and Ota at column 8, lines 3-12).

As to claim 11, Gordon, Coleman and Ota disclose wherein the distribution control center comprises a cable headend (see Gordon at Fig. 1).

As to claim 12, Gordon, Coleman and Ota disclose wherein the transport stream generator 102 is co-located with the session manager 106 at the distribution control center (see Gordon at Fig. 1).

As to claim 13, Gordon, Coleman and Ota disclose wherein the transport stream generator 102 is located separately from the session manager 106 (see Gordon at Fig. 1).

As to claim 14, Gordon, Coleman and Ota disclose wherein the session manager (106, see Gordon at Fig. 1-2 and 216, Fig. 4; page 20, lines 33-page 21, lines 19) comprises:

A monitoring module 218 for receiving acquisition, release, and request messages from a plurality of terminals;

A tracking module 220 for maintaining a dynamically list of terminals that are presently acquiring each demand-cast stream (see Gordon at page 14, lines 28-34; page 18, lines 1-6); and

A controlling module 222 for informing the transport stream generator 202 when a terminal requests demand-cast stream which is not present in the transport stream and for informing the transport stream generator when there is no longer any terminals acquiring the demand-cast stream (see Gordon at page 21, lines 16-19).

As to claim 15, Gordon, Coleman and Ota disclose wherein the transport generator 102 comprises:

An interface to a session manager 106 for receiving demand-cast program guide usage information 103 from the session manager 106 (see Gordon at page 14, lines 17-22);

A multiplexer (inherently within the server 102) for multiplexing demand-cast streams into a transport stream 104 for transmission to a plurality of terminals via a distribution network (see Gordon at page 4, lines 31-34+; page 9, lines 33-page 10, lines 8 and page 13, lines 18-20); and

A controller (inherently within the server 102) for controlling which demand-cast streams are multiplexed into the transport stream using the demand-cast program guide usage information 103 (see Gordon at page 9, line 33-page 10, lines 8 and page 14, lines 14-16).

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

Certificate of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

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Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES SHELEHEDA whose telephone number is (571)272-7357. The examiner can normally be reached on Monday - Friday, 9:00AM - 5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

James Sheleheda
Examiner, Art Unit 2623

JS

/Chris Kelley/
Supervisory Patent Examiner, Art Unit 2623